



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0024]

RIN 1625-AA00

Safety Zone; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of the Cape Fear River in New Hanover County, North Carolina. This temporary safety zone is intended to restrict vessel traffic on the Cape Fear River while a vessel prepares for and actively off-loads two new Post-Panamax gantry cranes to the North Carolina State Port Authority in Wilmington, North Carolina. This action is intended to restrict vessel traffic on the Cape Fear River to protect mariners and vessels from the hazards associated with off-loading the two gantry cranes. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative. This proposed rule is a follow-up action to a proposed rule that can be found in docket number USCG-2017-0965. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0024 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: 910- 772–2221, email: Matthew.I.Tyson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background, Purpose, and Legal Basis

On August 22, 2017, the North Carolina State Port Authority notified the Coast Guard that they will be transporting two pre-assembled Post-Panamax gantry cranes up the Cape Fear River to the North Carolina State Port in Wilmington, North Carolina. The planned transit date is April 1, 2018 with alternate dates of March 29th, 30th, 31st, April 2nd, 3rd, or 4th, 2018. A proposed safety zone for the transit can be found in docket number USCG-2017-0965. Once the transit is complete a second safety zone is needed for the gantry cranes off-loading at the North Carolina State Port in Wilmington, North Carolina. The COTP North Carolina has determined that potential safety hazards

associated with the gantry cranes off-loading would be a concern for anyone transiting the Cape Fear River.

The purpose of this rule is to protect persons, property, vessels, and the marine environment on the navigable waters on the Cape Fear River during the off load of the gantry cranes. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone on a portion of the Cape Fear River to be enforced during the preparation and active off-loading of two pre-assembled Post-Panamax gantry cranes at the North Carolina State Port in Wilmington, North Carolina for seven days, beginning once the transport vessel moors. As stated in the proposed safety zone found in docket number USCG-2017-0965, the vessel is scheduled to complete its transit on April 1, 2018. There will be alternate dates of March 29th, 30th, 31st, April 2nd, 3rd, or 4th, 2018 in case severe weather or other conditions prevent the safe transit of the vessel on April 1st. The safety zone will be enforced at various times once the vessel has been safely moored at North Carolina State Port in Wilmington, North Carolina and terminate upon completion of the crane off-load evolution. The safety zone will include all navigable waters of the Cape Fear River within 200 yards of the transport vessel while it is moored. The duration of this zone is intended to protect persons, property, vessels, and the marine environment on the navigable waters of the Cape Fear River during the off-load of the gantry cranes. No vessel or person will be permitted to enter the safety zone unless specifically authorized by the Captain of the Port North Carolina or a designated representative. No vessels greater than 40 feet in height

will be allowed to transit the safety zone.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the proposed safety zone. Vessel traffic will not be allowed to enter or transit a portion of the Cape Fear River beginning on April 1, 2018 with alternate dates of March 29th, 30th, 31st, April 2nd, 3rd, or 4th, 2018 for seven days. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone. This portion of the Cape Fear River has been determined to be a high traffic area. This rule allows vessels to request specific authorization to pass through the safety zone as long as they are under the height restriction of 40 feet.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone enforced at various times over a seven day period that would prohibit entry within 200 yards of a moored vessel. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and

160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0024 to read as follows:

§ 165.T05-0024 Safety Zone, Cape Fear River, Wilmington, NC

(a) Location. The following area is a safety zone: all navigable waters of the Cape Fear River within 200 yards around the vessel transporting the two new Post-Panamax gantry cranes to the North Carolina State Port Authority in Wilmington, North Carolina while the vessel is moored at the North Carolina State Port in Wilmington, North Carolina.

(b) Definitions. As used in this section --

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Participants means persons and vessels involved in support of the gantry crane off load.

(c) Regulations. (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. All other vessels must depart the zone immediately.

(3) To request permission to remain in, enter, or transit through the safety zone, contact the COTP North Carolina or the COTP North Carolina's representative through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North

Carolina, at telephone number 910-343-3882, or on VHF-FM marine band radio channel 13 (165.65 MHz) or channel 16 (156.8 MHz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement Period. This regulation will be enforced at various times for seven days once the transport vessel is moored at its berth—beginning April 1, 2018 or alternatively, March 29th, 30th, 31st, April 2nd, 3rd, or 4th, 2018.

Dated: February 2, 2018

Bion B. Stewart,
Captain, U. S. Coast Guard
Captain of the Port North Carolina.
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